

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

SNOHOMISH COUNTY FARM BUREAU,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

**CASE No. 12-3-0010**

**(SCFB II)**

**FINAL DECISION AND ORDER**

***SYNOPSIS***

Snohomish County adopted Amended Ordinance 12-047 amending two sections of its Comprehensive Plan - the Agricultural Lands section of its Land Use Chapter and the Natural Environment Chapter. The amendments link habitat restoration for anadromous fish with preservation of agricultural resource lands. Snohomish County Farm Bureau challenged the County's action as creating an implicit exception to the requirement to conduct a de-designation process prior to any restoration action which will inundate and destroy farm land.

The Farm Bureau failed to carry its burden of proof. The Board was unable to reach Petitioner's underlying question based on the arguments and authorities advanced. The matter is dismissed.

**I. PROCEDURAL BACKGROUND**

Petitioner Snohomish County Farm Bureau challenges Snohomish County's adoption of Amended Ordinance 12-047, amending the general policy plan of the Snohomish County Growth Management Act Comprehensive Plan.

1 In accordance with the case calendar for motions, the parties filed cross-motions for  
2 dispositive determination of Legal Issues 2, 3 and 4. The Board issued its Order on Motions  
3 January 31, 2013, dismissing Legal Issues 2 and 3 pursuant to WAC 242-03-560 and  
4 dismissing Legal Issue 4 for lack of participation standing. Legal Issue 1 remained for  
5 hearing and decision on the merits.

6 The parties filed prehearing briefs and motions, as follows:

- 7 • Petitioner's Opening Brief, February 19, 2013
- 8 • Snohomish County's Prehearing Brief, March 5, 2013
- 9 • Petitioner's Reply Brief, March 11, 2013
- 10 • Snohomish County's Motion to Strike, March 18, 2013
- 11 • Petitioner's Response to Respondent's Motion to Strike, Petitioner's Motion for  
12 Official Notice, Petitioner's Motion to Supplement, March 20, 2013
- 13 • Snohomish County's Response to Petitioner's Motion for Official Notice and  
14 Motion to Supplement the Record, March 27, 2013
- 15 • Snohomish County's Supplemental Brief, March 25, 2013<sup>1</sup>

16 The Hearing on the Merits was convened April 2, 2013, at the Snohomish County  
17 Administrative Building. Present for the Board were Margaret Pageler, presiding officer,  
18 Cheryl Pflug and William Roehl. Petitioner Snohomish County Farm Bureau appeared by its  
19 representative Edwin F. Moats. Snohomish County was represented by Deputy Prosecuting  
20 Attorneys Alethea Hart and Martin Rollins. Deputy Prosecuting Attorney John Moffat,  
21 Surface Water Management Division Director Debbie Terwilleger, and other County  
22 personnel were in attendance. Kathleen Hamilton of Buell Realtime Reporting provided  
23 court reporting services.

24 The hearing provided the Board an opportunity to ask questions clarifying important  
25 facts in the case and providing better understanding of the legal arguments of the parties.  
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32 <sup>1</sup> The Board issued its Final Decision and Order in the related case of *Snohomish County Farm Bureau v. Snohomish County and Washington State Department of Ecology (SCFB I)*, Case No. 12-3-0008, on March 14, 2013, after the close of briefing in this matter. The Board allowed supplemental briefing in light of the *SCFB I* FDO. Order Amending Hearing Date and Allowing Supplemental Briefing, March 15, 2013.

1 **II. JURISDICTION AND STANDARD OF REVIEW**

2 **A. Board Jurisdiction**

3 The Board finds the Petitions for Review were timely filed, pursuant to RCW  
4 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board,  
5 pursuant to RCW 36.70A.280(2).<sup>2</sup> The Board finds it has jurisdiction over the subject matter  
6 of the petitions pursuant to RCW 36.70A.280(1).  
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8 **B. Presumption of Validity, Burden of Proof, and Standard of Review**

9 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,  
10 and amendments to them, are presumed valid upon adoption.<sup>3</sup> This presumption creates a  
11 high threshold for challengers as the burden is on the petitioners to demonstrate that any  
12 action taken by the County is not in compliance with the GMA.<sup>4</sup>  
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14 The Growth Management Hearings Board is charged with adjudicating GMA  
15 compliance and, when necessary, invalidating noncompliant plans and development  
16 regulations.<sup>5</sup> The Supreme Court explained in *Lewis County v. Western Washington*  
17 *Growth Management Hearings Board*:<sup>6</sup>

18 The Board is empowered to determine whether [county] decisions comply  
19 with GMA requirements, to remand noncompliant ordinances to [the county],  
20 and even to invalidate part or all of a comprehensive plan or development  
21 regulation until it is brought into compliance.

22 The scope of the Board's review is limited to determining whether the County has  
23 achieved compliance with the GMA only with respect to those issues presented in a timely  
24 petition for review.<sup>7</sup> The GMA directs that the Board, after full consideration of the petition,  
25 shall determine whether there is compliance with the requirements of the GMA.<sup>8</sup> In making  
26 its determination, the Board shall consider the criteria adopted by the Department of  
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29 <sup>2</sup> Legal Issue 4 was dismissed for lack of participation standing. Order on Motions (Jan. 31, 2013)

30 <sup>3</sup> RCW 36.70A.320(1) provides: "[C]omprehensive plans and development regulations, and amendments  
thereto, adopted under this chapter are presumed valid upon adoption."

31 <sup>4</sup> RCW 36.70A.320(2) provides: "[T]he burden is on the petitioner to demonstrate that any action taken by a  
state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

32 <sup>5</sup> RCW 36.70A.280, RCW 36.70A.302.

<sup>6</sup> 157 Wn.2d 488 at 498, n. 7, 139 P.3d 1096 (2006).

<sup>7</sup> RCW 36.70A.290(1).

<sup>8</sup> RCW 36.70A.320(3).

1 Commerce under RCW 36.70A.190.<sup>9</sup> The Board shall find compliance unless it determines  
2 that the County's action is clearly erroneous in view of the entire record before the Board  
3 and in light of the goals and requirements of the GMA.<sup>10</sup> In order to find the County's action  
4 clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake  
5 has been committed."<sup>11</sup>

6  
7 In reviewing the planning decisions of cities and counties, the Board is instructed to  
8 recognize "the broad range of discretion that may be exercised by counties and cities" and  
9 to "grant deference to counties and cities in how they plan for growth."<sup>12</sup> However, the  
10 County's discretion is not boundless; its actions must be consistent with the goals and  
11 requirements of the GMA.<sup>13</sup> As to the degree of deference to be granted under the clearly  
12 erroneous standard, the Supreme Court has stated:

13 The amount [of deference] is neither unlimited nor does it approximate a  
14 rubber stamp. It requires the Board to give the [jurisdiction's] actions a  
15 "critical review" and is a "more intense standard of review" than the arbitrary  
16 and capricious standard.<sup>14</sup>

17 Thus, the burden is on the Petitioner to overcome the presumption of validity and  
18 demonstrate that the challenged action taken by the County is clearly erroneous in light of  
19 the goals and requirements of the GMA.  
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23 <sup>9</sup> Procedural criteria adopted by Commerce pursuant to RCW 36.70A.190(4)(b) are found at WAC 365-196.  
24 Commerce has also adopted minimum guidelines pursuant to RCW 36.70A.050 for the classification of  
25 agriculture, forest, and mineral lands and critical areas; these rules are found at WAC 365-190.

26 <sup>10</sup> RCW 36.70A.320(3).

27 <sup>11</sup> *Lewis County v. WWGMHB ("Lewis County")*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006) (citing to *Dept.*  
28 *of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

29 <sup>12</sup> RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be  
30 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the  
31 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements  
32 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities  
to balance priorities and options for action in full consideration of local circumstances. The legislature finds that  
while this chapter requires local planning to take place within a framework of state goals and requirements, the  
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and  
implementing a county's or city's future rests with that community."

<sup>13</sup> *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the  
goals and requirements of the GMA). See also, *Swinomish Indian Tribal Community, et al. v. Western*  
*Washington Growth Management Hearings Board*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007).

<sup>14</sup> *Swinomish*, at 435, n.8.

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### III. PRELIMINARY MATTERS

#### A. Evidentiary Matters<sup>15</sup>

Snohomish County moves to strike portions of the Farm Bureau's opening and reply briefs that present facts or refer to documents not in the record or as to which supplementation has not properly been requested or has previously been denied.<sup>16</sup>

The Farm Bureau responds with motions to supplement the record with "all the information the Respondent moves to strike."<sup>17</sup> The Bureau also requests the Board to take official notice under WAC 242-03-640(1) of "all the material in the reply brief which the County moves to strike," claiming that "the objected material appears on the official websites of government agencies."<sup>18</sup>

Evidentiary materials must be submitted as exhibits attached to briefs. The Prehearing Order in this case explained that documents "do not become evidence until they are referenced in a brief and **submitted to the Board as exhibits to that brief.**"<sup>19</sup> If taken from the Index to the record, the exhibits are automatically admitted, but they still must be attached to the brief and identified by the Index number from which they are drawn. If not taken from the Index, the documents must be supported by a motion to supplement which attaches the requested document.

WAC 242-03-620 states:

All evidence from the record which is to be relied upon at hearing shall be submitted to the board and to the other parties with their briefs.

Specifically, the Rule requires:

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<sup>15</sup> The following pleadings were filed:

- Snohomish County's Motion to Strike, March 18, 2013
- Petitioner's Response to Respondent's Motion to Strike, Petitioner's Motion for Official Notice, Petitioner's Motion to Supplement, March 20, 2013
- Snohomish County's Response to Petitioner's Motion for Official Notice and Motion to Supplement the Record, March 27, 2013

<sup>16</sup> The motion to strike includes Farm Bureau Reply Brief, Section 2, pp. 2-4, and Farm Bureau Opening Brief (1) Section titled *Etiology of Ordinance 12-047* at pp. 2-5; (2) Section 3.A.1 titled *Express admission* at pp. 13-15; (3) Section 3.D titled *Intent Inferred from Attendant Circumstances* at pp. 21-23.

<sup>17</sup> Motion to Supplement at 2.

<sup>18</sup> *Id.*

<sup>19</sup> Corrected Prehearing Order at 4 (emphasis supplied).

1 (4)(c) That **documentary evidence not submitted with the briefs** and not  
2 in the record or supported by a timely filed motion to supplement the record  
3 pursuant to WAC 242-03-565 **not be received in evidence** in the absence  
4 of a clear showing that the offering party had good cause for the failure to  
5 produce the evidence sooner, unless it is submitted for impeachment or  
6 rebuttal purposes. (emphasis added)

7 WAC 242-03-565 permits the filing of motions to allow for supplemental evidence and  
8 provides, in part:

9 Generally, the board will review only documents and exhibits taken from the  
10 record developed by the city, county, or state in taking the action that is the  
11 subject of review by the board and attached to the briefs of a party. A party  
12 by motion may request that the board allow the record to be supplemented  
13 with additional evidence.

14 (1) A motion to supplement the record shall be filed by the deadline  
15 established in the prehearing order, **shall attach a copy of the document,**  
16 **and shall state the reasons why such evidence would be necessary or**  
17 **of substantial assistance to the board** in reaching its decision, as specified  
18 in RCW 36.70A.290(4).<sup>20</sup> The board may allow a later motion for  
19 supplementation on rebuttal or for other good cause shown. (emphasis  
20 added)

21 The Prehearing Order in this case advised the parties that supplementation of the  
22 record requires a motion "attaching the disputed documents."<sup>21</sup> The Board's Order on  
23 Motions underscored the requirement:<sup>22</sup>

24 By letter to the County, the Farm Bureau seeks to add a sequence of  
25 documents relevant to each of the Legal Issues in the case. However,  
26 **copies of the documents are not attached to the motion** as required by  
27 WAC 242-03-556(1). The Board cannot fairly decide whether a document is  
28 likely to be necessary to its determination of a case without reviewing the  
29 proffered document. **For this reason alone, the motion must be denied.**

30 The Farm Bureau also had requested admission of two groups of documents  
31 concerning the Leque Island and Smith Island Restoration Projects previously proffered in

32 <sup>20</sup>RCW 36.70A.290(4) provides: "The board shall base its decision on the record developed by the city, county,  
or the state and supplemented with additional evidence if the board determines that such additional evidence  
would be necessary or of substantial assistance to the board in reaching its decision."

<sup>21</sup> Corrected Prehearing Order, at 4.

<sup>22</sup> Order on Motions at 14 (emphasis added).

1 Case No. 12-3-0008. The Board ruled it could not supplement the record in the present  
2 case with materials from the prior case “without **satisfaction of the requirements of WAC**  
3 **242-03-565 which specifies attachment of documents.**”<sup>23</sup>

4 The Farm Bureau attached no exhibits to its opening or reply briefs in support of the  
5 facts objected to by Snohomish County. In response to the County’s Motion to Strike, the  
6 Bureau moved to supplement and attached a portion of the Smith Island Draft  
7 Environmental Impact Statement, June 2011. WAC 242-03-620(4)(c) allows the Board to  
8 admit late-filed evidence submitted for rebuttal purposes. The Smith Island document was  
9 attached to the Bureau’s March 20, 2013, motion and referenced in the brief, as required by  
10 the rules. The Board finds the Smith Island document may be of assistance to the Board’s  
11 decision in this case, and **supplementation is granted.**

12 The Board **grants the County’s motion to strike** the other sections of the Farm  
13 Bureau’s opening brief citing facts and documents which are not supported by attached  
14 exhibits from the record. Farm Bureau Opening Brief Section titled *Etiology of Ordinance 12-*  
15 *047* at pp. 2-5; Section 3.A.1 titled *Express admission* at pp. 13-15; and the portion of  
16 Section 3.D titled *JDWB/Leque/SnoCo Connection* at pp. 22-23 are **stricken.**

17 Reference to an official website is insufficient for official notice of material facts. The  
18 Farm Bureau’s Reply Brief referenced a series of websites as source for the acreage of  
19 various agricultural lands proposed to be inundated for salmon habitat enhancement. In  
20 response to the County’s motion to strike this section of the reply, the Bureau moved for the  
21 Board to officially notice the information from the websites as business customs, notorious  
22 facts, or technical or scientific facts.

23 WAC 242-03-640 provides:

- 24 (1) In the absence of conflicting evidence, the board or presiding officer upon  
25 request made before or during a hearing, may officially notice:  
26 (a) Business customs. General customs and practices followed in the  
27 transaction of business.  
28 (b) Notorious facts. Facts so generally and widely known to all well-informed  
29 persons as not to be subject to reasonable dispute or **specific facts**  
30 **which are capable of immediate and accurate demonstration by**  
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<sup>23</sup> Order on Motions at 15.

1 **resort to accessible sources of generally accepted authority,**  
2 including, but not exclusively, facts stated in any publication authorized or  
3 permitted by law to be made by any federal or state officer, department,  
4 or agency.

5 (c) Technical or scientific facts. Technical or scientific facts within the board's  
6 specialized knowledge. (emphasis added)

7 The Board agrees with the Bureau that the acreages of restoration projects may be  
8 "specific facts capable of immediate and accurate demonstration by resort to accessible  
9 sources of generally accepted authority" such as publications of government agencies,  
10 including their web pages.<sup>24</sup> However, mere reference to a web page is not sufficient to  
11 bring extra-record facts within the Board's notice.

12 The Board's rules contain no special procedure allowing citation to a website to  
13 substitute for the requirement of exhibits attached to the brief. Here, without printouts of the  
14 source documents or relevant excerpts, without a dated website screen shot, the Board  
15 cannot judge the context and accuracy of the acreage data.<sup>25</sup> The authenticity of the cited  
16 facts is not self-evident and the Board declines to take official notice. The motion to strike  
17 Reply Brief section 2 is **granted**.

## 18 **B. Abandoned Issues**

19 Legal Issue 1 includes allegations of non-compliance with a number of statutory  
20 provisions, some of which have not been briefed or argued by the Farm Bureau and must  
21 be deemed abandoned. The Board's Rules of Practice and Procedure provide: "Failure by  
22 [a petitioner] to brief an issue shall constitute abandonment of the unbriefed issue."<sup>26</sup> An  
23 issue is briefed when legal argument is provided.<sup>27</sup> Also, the Board has stated,  
24 "Inadequately briefed issues would be considered in a manner similar to consideration of  
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30 <sup>24</sup> The Farm Bureau provides eight web page links. Five are to government agency web pages and the three  
31 others to the Nature Conservancy, Wildlands of Washington, and Puget Sound Nearshore Restoration Project.

32 <sup>25</sup> The County at hearing pointed out discrepancies in the acreage figures on one of the cited webpages.  
Without an exhibit attached to the brief, the Board cannot resolve such disputes and cannot take official notice.

<sup>26</sup> WAC 242-03-590(1).

<sup>27</sup> *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and  
Order (Jan. 8, 1997) at 7; *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and  
Order (Sep. 2, 2008) at 7-8.

unbriefed issues and, therefore, should be deemed abandoned.”<sup>28</sup> Further, the Board has held, “An issue is briefed when legal argument is provided; it is not sufficient for a petitioner to make conclusory statements, without explaining how, as the law applies to the facts before the Board, a local government has failed to comply with the Act.”<sup>29</sup>

The County urges the Board to find virtually all of the Farm Bureau’s statutory claims abandoned. The Board will address the question of abandonment in the discussion of each statutory provision that follows.

#### IV. THE CHALLENGED ACTION AND CONTEXT

Ordinance No. 12-047 amends the land use and natural environment chapters of Snohomish County’s General Policy Plan with provisions related to the preservation of agricultural resource lands and habitat restoration for threatened and endangered species.<sup>30</sup>

The Ordinance recitals explain:

[T]hese amendments address the county’s desire to preserve agricultural resource lands and promote the long-term viability of our local agricultural industry while at the same time restoring habitat for threatened and endangered species of fish, including restoration required by the federally approved salmon recovery plans for the region.<sup>31</sup>

The recitals acknowledge “these priorities can conflict with each other when fish habitat restoration is proposed on agricultural resource land.”<sup>32</sup>

The Ordinance makes two amendments to the Agricultural Lands section of the Land Use Chapter of the General Policy Plan, adding a paragraph to the introductory narrative<sup>33</sup>

<sup>28</sup> *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider and Correct (Apr. 15, 1996) at 3.

<sup>29</sup> *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997) at 7; *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008) at 7-8.

<sup>30</sup> Ordinance 12-047 Title.

<sup>31</sup> *Id.* at 1.

<sup>32</sup> *Id.*

<sup>33</sup> Ordinance 12-047, at 11-12: “In 2010, the county co-sponsored and launched, along with funding partners including state agencies and the Tulalip and Stillaguamish Tribes, the Sustainable Lands Strategy Initiative. Founding members of the SLS Executive Committee included representatives from Futurewise, Forterra (formerly Cascade Land Conservancy), the Tulalip Tribes, Stillaguamish Tribe of Indians, Snohomish County Agricultural Advisory Board, Snohomish Conservation District and an independent farm operator. The goal of the initiative is to accommodate both habitat restoration for threatened and endangered species and protection

1 and a new Policy LU 7.B.7<sup>34</sup> calling for coordination of agricultural uses with ecological  
2 preservation.

3 The Ordinance makes three amendments to the Natural Environment Chapter,  
4 specifying that ecological protection and restoration must be coordinated with agricultural  
5 resource viability and productivity. The amendments:

- 6 • revise the policy framework for prioritizing natural environment programs,<sup>35</sup>
- 7 • revise strategies to enhance fish habitat,<sup>36</sup> and
- 8 • add a new policy to the goal of “protecting elements of the natural environment while  
9 promoting the long-term viability of commercial agriculture.”<sup>37</sup>

10 The County’s record shows the genesis of these amendments. Most of the County’s  
11 designated agricultural resource land lies within or near floodplain areas that are key to  
12 salmon recovery and habitat restoration.<sup>38</sup> For a number of years the County’s planning  
13 under the GMA to support the viability of agriculture<sup>39</sup> and its river basin planning under  
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19 of agricultural resource lands, in a manner that would generate net gains for the agricultural, tribal cultural and  
20 ecological productivity and health in Snohomish County. Through this initiative, the general guidelines and  
21 principles upon which to base future actions to preserve farmlands and restore fish and wildlife have been  
22 developed.”

23 <sup>34</sup> Policy LU 7.B.7. The county shall coordinate the use of agricultural resource lands with the preservation of  
24 ecological functions and values by incorporating incentives into reach scale plans.

25 <sup>35</sup> Policy NE 1.A.7. The county shall establish criteria for prioritizing natural resource industry uses and natural  
26 environment protection enhancement and/or restoration based on the land’s potential for resource productivity,  
27 ecological function and investment-to-return ratio.

28 <sup>36</sup> Policy NE 1.C.2:

29 (c) coordinating the use of agricultural resource lands with the protection, restoration and/or  
30 enhancement of ecological functions and values;

31 (d) developing incentive-based, voluntary restoration and enhancement programs to offset impacts  
32 to overall functions and values resulting from development projects or the use of agricultural  
resource lands and encouraging creative on-site, ~~off-site, or joint~~ and reach scale  
restoration/enhancement proposals that optimize natural and/or agricultural resource values and  
ecological function.

<sup>37</sup> Policy NE 4.A.6. The county shall develop and implement actions to conserve agricultural resource lands  
and restore ecological function and values, seeking to increase both ecological and agricultural resource  
viability and productivity.

<sup>38</sup> Index # 76, Staff Report to Planning Commission, April 4, 2012, at 2.

<sup>39</sup> In 2005 the County Executive issued the Snohomish County Agricultural Action Plan and convened the  
Snohomish County Agricultural Economic Development Action Team (SAEDAT) to develop strategies for  
sustaining the agricultural industry. Index # 9, at i.

1 state and federal mandates to restore endangered salmon<sup>40</sup> proceeded on separate  
2 tracks.<sup>41</sup> By 2007 it was apparent the federally-approved salmon-recovery plans for the  
3 Snohomish and Stillaguamish watersheds directly conflicted with the GMA mandate to  
4 conserve agricultural lands. The County's agricultural initiative identified "loss of farmlands  
5 through their conversion to wildlife habitat conservation areas" as a prime threat to  
6 maintaining sufficient productive and contiguous acreage for profitable farming.<sup>42</sup> By 2008  
7 several thousands of acres of rich delta farmland were targeted for potential salmon habitat  
8 restoration and compensatory mitigation projects in the Stillaguamish and Snohomish River  
9 basins.<sup>43</sup>

11 In 2010, the County convened a high-level fish/farm/tribe negotiating process – the  
12 Sustainable Lands Strategy initiative – for the purpose of reconciling agricultural and  
13 restoration imperatives.<sup>44</sup> The Framework Report, which is the first phase of the SLS  
14 process, establishes the principle of "net gain" for both agricultural viability and salmon  
15 recovery. The "net gain" goal is to be fleshed out in reach-scale plans to be developed and  
16 implemented in the next five years.<sup>45</sup>

18 Ordinance 12-047 adopts comprehensive plan amendments cross-referencing  
19 salmon habitat in the Agricultural Lands section and farmlands in the Natural Environment  
20 chapter as a first step in the SLS process. The Farm Bureau challenges the comprehensive  
21 plan amendments as creating an implicit exception to the GMA requirement that designated  
22 farmland must be conserved unless a de-designation analysis concludes the statutory  
23 criteria for agricultural lands are no longer met.  
24

26 <sup>40</sup> The Snohomish River Basin Salmon Recovery Forum Plan and the Stillaguamish Watershed Council Plan  
27 were developed under the 1998 State Salmon Recovery Act, incorporated as a chapter in the Puget Sound  
28 Salmon Recovery Plan, and adopted by NOAA Fisheries in 2007. Index # 76 at 1-2; #33, at 8.

29 <sup>41</sup> The SLS Report at 9 explains: "A great deal of planning, study and community involvement has already  
30 gone into producing current strategies for sustaining both salmon and agriculture in Snohomish County.  
31 However, the two efforts have largely taken place on separate tracks . . . The unfortunate outcome of this  
32 disparate approach is that today fish and farm interests often find themselves pitted against each other in the  
late stages of decision-making." Index # 33

<sup>42</sup> Index # 6, Strategies for Economic Recovery and Expansion of Snohomish County's Agriculture Industry  
(SEADAT), Feb. 7, 2007 at 20.

<sup>43</sup> Index # 33, Sustainable Lands Strategy, Phase I Framework Report, March 14, 2011, at 3-4.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 7, 11.

1 The Board's analysis that follows begins with a review of each statutory provision  
2 asserted by the Farm Bureau as a basis for non-compliance. Then the Board looks at each  
3 of the comprehensive plan amendments adopted in Ordinance 12-047 to determine whether  
4 the RCW 36.70A.070 requirement for internal comprehensive plan consistency is violated.  
5

## 6 **V. LEGAL ISSUE AND ANALYSIS**

7 The Prehearing Order sets forth Legal Issue 1 as follows:

- 8
- 9 1. Does Ordinance 12-047 and its incorporated exhibits fail to comply with the GMA  
10 and applicable regulations, in the following particulars: RCW 36.70A.060(1)(a),  
11 RCW 36.70A.020(8), RCW 36.70A.070(1) & (5)(c)(v), RCW 36.70A.177(1),  
12 consistency provisions of RCW 36.70A.070 and RCW 36.70A.040, and  
13 Snohomish County Comprehensive Plan General Policy Plan Goal LU 7 requiring  
14 conservation of agricultural land, because, considered in the context of the  
15 ongoing dispute in Snohomish County regarding the intent of the county and  
16 others to allow and/or cause the destruction of designated agricultural land by  
17 saltwater or freshwater inundation, the ordinance and its incorporated exhibits  
18 have the clear practical effect of vesting the county with discretionary authority to  
19 issue permits for land use projects proposing the destruction of land designated  
20 agricultural in the GMACP by saltwater or freshwater inundation without prior  
21 redesignation to an appropriate non-agricultural designation?

### 22 **A. Positions of the Parties**

23 Legal Issue 1 asserts Ordinance 12-047 violates seven different provisions of the  
24 GMA. The Farm Bureau argues the Ordinance amends the comprehensive plan to facilitate  
25 an exception to the process of docketing a proposal for de-designation of agricultural land  
26 when farmlands are proposed to be inundated as a result of habitat restoration activities.

27 The Bureau characterizes this exception:

28 **Restoration Exception.** Projects for habitat restoration which propose  
29 flooding of designated agricultural land with saltwater or freshwater need not  
30 first re-designate the land to a non-agricultural designation.<sup>46</sup>

31 The Farm Bureau asserts the Restoration Exception circumvents the docketing  
32 process, which provides transparency and public input. The Bureau argues the Restoration  
Exception must be recognized as intended by the County, although not explicitly adopted.

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<sup>46</sup> Petitioner's Opening Brief at 9.

1 The Bureau contends the comprehensive plan amendments enacted in Ordinance 12-047  
2 demonstrate that the County has arrogated to itself “unbridled discretion” to inundate and  
3 destroy farmland for the purposes of salmon recovery.

4 The County asserts the Farm Bureau’s claims of statutory violations are inadequately  
5 briefed or based on inapplicable statutory provisions. With its Supplemental Brief and  
6 exhibits, the County presents the collaborative process by which it has attempted to  
7 reconcile competing legal and policy directives to ensure the County does not ignore  
8 agriculture to the benefit of salmon habitat or vice-versa. The County contends the  
9 amended provisions of the comprehensive plan read in context do not interfere with the  
10 preservation of agricultural land or conservation of the agricultural industry.<sup>47</sup>

11 **B. Issue 1 is reduced to solely considering RCW 36.70A.070 (preamble)**  
12 **consistency.**

13 Although Issue 1 alleges the Ordinance violates seven distinct GMA provisions, the  
14 Bureau’s references to inapplicable provisions and abandonment of others reduces its claim  
15 to a single possible statutory violation: RCW 36.70A.070(preamble). Each of the others is  
16 addressed below.

17 **RCW 36.70A.060(1)(a):** The Farm Bureau fails to cite or argue violation of RCW  
18 36.70A.060(1)(a)<sup>48</sup> and the claim must be deemed **abandoned**.

19 **RCW 36.70A.070(1):** This statute outlines the required land use element for a  
20 comprehensive plan. The provision begins:

21 A land use element designating the proposed general distribution and general  
22 location and extent of the uses of land, where appropriate, for agriculture,  
23 timber production, housing, commerce, industry, recreation, open spaces,  
24 general aviation airports, public utilities, public facilities, and other land uses.

25 The Farm Bureau has not demonstrated any failure to include designation and  
26 “general distribution” of agricultural land in the land use element of the Snohomish County  
27 comprehensive plan. The Farm Bureau has not demonstrated a violation of RCW  
28 36.70A.070(1).  
29  
30  
31

32 <sup>47</sup> County’s Prehearing Brief at 33.

<sup>48</sup> RCW 36.70A.060(1) applies to initial development regulations adopted to conserve agricultural lands designated under RCW 36.70A.170(1)(a) prior to adoption of a comprehensive plan. Arguably, subsequent comprehensive plan amendments are not governed by this provision.

1 **RCW 36.70A.070(5)(c)(v):** This statute is part of the required rural element and  
2 provides that “measures governing rural development” shall include measures “protecting  
3 against conflicts [from rural development] with the use of agricultural resource lands.” In this  
4 case, Ordinance 12-047 amends the County’s Natural Environment chapter and the  
5 Agricultural Lands portion of the Land Use chapter. The Rural Lands chapter of the  
6 Comprehensive Plan is not amended by the Ordinance. RCW 36.70A.070(5)(c)(v) is  
7 **inapplicable** here.  
8

9 **RCW 36.70A.177(1):** The Farm Bureau fails to cite or argue violation of RCW  
10 36.70A.177(1), a statute concerning innovative zoning techniques,<sup>49</sup> and the claim must be  
11 deemed **abandoned**.

12 **RCW 36.70A.040:** The “consistency provisions” of RCW 36.70A.040 applicable to  
13 Snohomish County are found in subsection (3)(d) which requires the county “shall adopt a  
14 comprehensive plan under this chapter and development regulations that are consistent  
15 with and implement the comprehensive plan on or before July 1, 1994.”<sup>50</sup> Ordinance 12-047  
16 did not adopt or amend development regulations, and the “consistency provisions” of RCW  
17 36.70A.040 are **inapplicable** here.  
18

19 **RCW 36.70A.020(8):** GMA Planning Goal 8 provides:

20 Natural resource industries. Maintain and enhance natural resource-based  
21 industries, including productive timber, agricultural, and fisheries industries.  
22 Encourage the conservation of productive forest lands and productive  
23 agricultural lands, and discourage incompatible uses.

24 The Farm Bureau’s Opening Brief appears to refer to Goal 8 in a single sentence:  
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28 <sup>49</sup> RCW 36.70A.177 concerns innovative zoning techniques to protect agricultural lands and provides:

29 (1) A county or city may use a variety of innovative zoning techniques in areas designated as  
30 agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative  
31 zoning techniques should be designed to conserve agricultural resource lands and encourage the  
32 agricultural economy. Except as provided in subsection(3) of this section [accessory uses], a county  
or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not  
suitable for agricultural purposes.

The present case does not involve a challenge to agricultural zoning or innovative zoning techniques.

<sup>50</sup> RCW 36.70A.040(3) applies to initial plans and development regulations adopted “on or before July 1,  
1994.” Arguably, subsequent amendments to the plan or development regulations are not governed by this  
provision.

1 In the instant case, the Restoration Exception would without question  
2 negatively impact agricultural resource lands and substantially interfere with  
3 the GMA goal of maintaining *and enhancing* the agricultural industry, and  
4 could by no means **ensure** the contrary.<sup>51</sup>

5 The Board reads this sentence as the kind of conclusory reference that may be  
6 deemed to constitute **abandonment**.

7 Even if the Board considers Goal 8, the Goal itself requires enhancement of both  
8 fisheries industries and agriculture. In *Swinomish Indian Tribal Community v. Skagit*  
9 *County*,<sup>52</sup> our Supreme Court recognized that fisheries industries are also natural resource  
10 industries to be maintained and enhanced pursuant to Goal 8. The Court described the  
11 anadromous fish stocks in the Skagit and Samish River systems as a valuable natural  
12 resource “also of economic significance because just as farmers depend on agricultural land  
13 for their livelihood, persons involved in the fishing industry and belonging to the Tribe  
14 depend on healthy rivers for theirs.”<sup>53</sup> The *Swinomish* case presented a fact pattern similar  
15 to the one before us: diked and drained agricultural lands associated with deltas or  
16 floodplains of rivers home to endangered anadromous fish species. The *Swinomish* Court  
17 recognized the tension between the conservation of productive agricultural lands as stated  
18 in Goal 8 and the RCW 36.70A.172(1) duty to “give special consideration to conservation or  
19 protection measures necessary to preserve or enhance anadromous fisheries.”  
20

21 The *Swinomish* Court determined Goal 8 does not establish a planning priority for  
22 land which qualifies both as agricultural land of long term significance and as critical area for  
23 salmon habitat.<sup>54</sup> Thus the County’s Comprehensive Plan amendments that commit the  
24 County to “net gains” for both salmon restoration and the agricultural industry are not  
25 inconsistent with Goal 8.<sup>55</sup>  
26

### 27 **C. Consistency provisions of RCW 36.70A.070**

28 RCW 36.70A.070 (preamble) provides, in pertinent part:  
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31 <sup>51</sup> Petitioner's Opening Brief at 12 (emphasis in original).

32 <sup>52</sup> 161 Wn. 2d at 424-426.

<sup>53</sup> *Id.* at 426.

<sup>54</sup> *Id.* at 425.

<sup>55</sup> See, Policy NE 4.A.6.

1 The comprehensive plan of a county or city that is required or chooses to  
2 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive  
3 text covering objectives, principles, and standards used to develop the  
4 comprehensive plan. The plan shall be an internally consistent document and  
5 all elements shall be consistent with the future land use map.

6 The internal consistency requirement of RCW 36.70A.070 (preamble) means that the  
7 policies within the comprehensive plan must be compatible; one policy must not thwart  
8 another.<sup>56</sup> The core of the Farm Bureau's consistency argument is that the amendments  
9 adopted in Ordinance 12-047 are inconsistent with the County's Comprehensive Plan Goal  
10 LU 7 which requires conservation of agricultural land because the amendments *implicitly*  
11 allow habitat restoration projects which destroy farmland without a de-designation process.

12 **D. The Bureau has failed to argue any of the newly adopted policies are**  
13 **inconsistent with the language of Goal LU 7**

14 Goal LU 7 is the section of the Comprehensive Plan Land Use chapter articulating  
15 goals, objectives and policies concerning agricultural lands. Goal LU 7 reads:

16 Conserve agriculture and agricultural land through a variety of planning  
17 techniques, regulations, incentive and acquisition methods.

18 Arguably, the Farm Bureau's reference to LU7 embraces the whole agricultural lands  
19 section of the land use chapter – all objectives and policies numbered LU7 - but the Bureau  
20 has not identified specific policies alleged to be contradicted or thwarted by the Ordinance  
21 12-047 amendments. The Board notes LU 7.A.3 explicitly requires agricultural lands of long-  
22 term commercial significance to be designated in a legislative process that applies the  
23 criteria drawn from the GMA.

24 **7.A.3** The county shall designate farmland as required by the GMA, and  
25 consider the guidance provided for designating agricultural lands of long term  
26 commercial significance adopted by the State. In addition, farmland  
27 designations and expansions of such designations on contiguous lands  
28 should be made considering all of the following criteria: [list omitted]

29 Objective LU 7.B provides:  
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<sup>56</sup> *Hensley IV v. Snohomish County*, CPSGMHB Case No. 01-3-0004c, Final Decision and Order (Aug. 15, 2001) at 20.

1 Conserve designated farmland and limit the intrusion of non-agricultural uses  
2 into designated areas.

3 The burden is on the Bureau to demonstrate that any of the amendments adopted by  
4 Ordinance 12-047 thwarts the LU 7 goal of conserving agricultural land. The Farm Bureau  
5 acknowledges there is no LU 7 policy explicitly requiring a docketing or de-designation  
6 process when the use of agricultural land is changed. The Farm Bureau points to the  
7 County's docketing regulations where a request to change the use of designated agricultural  
8 land requires application of the GMA criteria.<sup>57</sup> The County responds that Ordinance 12-047  
9 makes no amendments to the docketing regulations.  
10

11 The Board is well-aware of the "legislative mandate for the conservation of  
12 agricultural lands" identified by the Supreme Court in *King County v. CPSGMHB* (the *Soccer*  
13 *Fields* case).<sup>58</sup> Applying this mandate, the courts apply the statutory designation criteria  
14 and the Commerce minimum guidelines to determine whether land proposed for removal  
15 from agricultural designation no longer meets the GMA criteria.<sup>59</sup> However, the Farm  
16 Bureau did not cite these authorities, and the Board may not make its argument for it.  
17

18 The County proposes that habitat restoration and enhancement activities are not  
19 "land uses" but are "modification activities" as defined in its Shoreline Master Program.<sup>60</sup>  
20 Thus encroachments on agricultural lands for restoration purposes are not an "intrusion of  
21 non-agricultural uses" to be limited by LU 7.B, under the County's theory. The Board notes  
22 its decision in the Shoreline Master Program case relied on by the County was based on  
23 provisions of the Shoreline Management Act and implementing guidelines, provisions which  
24 do not govern GMA considerations. However, the Board finds the Farm Bureau's legal issue  
25 and arguments in this case do not reach the question whether the GMA requires de-  
26

27  
28 <sup>57</sup> Petitioner's Opening Brief at 13, citing SCC 30.74.010(2)(h) and SCC 30.74.030(1)(b).

29 <sup>58</sup> 142 Wn. 2d at 562, 14 P.3d 133 (2000) (deriving the legislative mandate from RCW 36.70A.020(8), .060(1)  
30 and .170, read together).

31 <sup>59</sup> *Yakima County v. EWGMHB*, 146 Wn.App. 679, 688-89, 192 P.3d 12 (2008) (In reviewing a de-designation,  
32 "we must determine whether the property continues to meet the definition of agricultural land"); *Clark County v. WWGMHB*, 161 Wn. App. 204, 234, 254 P.3d 862 (2011) ("We evaluate whether a de-designation of agricultural land was clearly erroneous by determining whether the property in question continues to meet the GMA definition of "agricultural land" as defined in *Lewis County*") *rev'd in part on other grounds*, Supreme Court # 85989-2 (March 21, 2013).

<sup>60</sup> Citing *Snohomish County Farm Bureau v. Snohomish County and Washington State Department of Ecology* (SCFB I), Case No. 12-3-0008, FDO (Mar. 14, 2013) at 27-28.

1 designation before restoration activities. In any event, as discussed below, the  
2 comprehensive plan amendments adopted by Ordinance 12-047 are not contrary to such a  
3 requirement.

4 The question before the Board is constrained by the Farm Bureau's Legal Issue 1.  
5 Has the Bureau met its burden of proof to demonstrate that any of the amendments adopted  
6 by Ordinance 12-047 thwarts the LU 7 goal of conserving agricultural land and thus violates  
7 RCW 36.70A.070 (preamble)?  
8

9 **E. Even if the Farm Bureau had argued inconsistency, none of the amendments**  
10 **thwarts LU 7**

11 The Ordinance 12-047 comprehensive plan amendments include two additions to the  
12 Agricultural Lands section and three revisions of the Natural Environment chapter of the  
13 comprehensive plan.

14 *Agricultural Lands Introductory Narrative.* The following paragraph is added:

15 In 2010, the county co-sponsored and launched, along with funding partners  
16 including state agencies and the Tulalip and Stillaguamish Tribes, the  
17 Sustainable Lands Strategy Initiative. Founding members of the SLS  
18 Executive Committee included representatives from Futurewise, Forterra  
19 (formerly Cascade Land Conservancy), the Tulalip Tribes, Stillaguamish  
20 Tribe of Indians, Snohomish County Agricultural Advisory Board, Snohomish  
21 Conservation District and an independent farm operator. The goal of the  
22 initiative is to accommodate both habitat restoration for threatened and  
23 endangered species and protection of agricultural resource lands, in a  
24 manner that would generate net gains for the agricultural, tribal cultural and  
25 ecological productivity and health in Snohomish County. Through this  
26 initiative, the general guidelines and principles upon which to base future  
27 actions to preserve farmlands and restore fish and wildlife have been  
28 developed.

29 The County asserts this amendment simply documents a commitment to both  
30 preserve viable agriculture and restore salmon populations. The Farm Bureau's objections  
31 are directed to the County's process, which the Bureau views as biased.<sup>61</sup> The Bureau's  
32 objection to the narrative is not related to the legal issue before the Board. The Board finds

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<sup>61</sup> The Farm Bureau objects that the SLS process is dominated by fishery and tribal interests and driven by an agenda to bypass GMA protection for prime agricultural lands, including WSDOT and WDFW sponsorship of several habitat restoration projects. Petitioner's Opening Brief at 4, 19-20.

1 the Farm Bureau has not demonstrated the agricultural lands narrative is inconsistent with  
2 the LU 7 goal of conserving agricultural lands.

3 New Agricultural Lands Policy LU 7.B.7:

4 The county shall coordinate the use of agricultural resource lands with the  
5 preservation of ecological functions and values by incorporating incentives  
6 into reach scale plans.

7 Farm Bureau asserts “this new policy is the county’s grant to itself to coordinate  
8 fish/farm conflicts,” which the Bureau views as a “self-grant of unbridled discretion.”<sup>62</sup> The  
9 County explains this new policy speaks of providing incentives in reach scale plans for  
10 farmers to adopt practices that preserve existing ecological functions.<sup>63</sup> At hearing, the  
11 County explained that “reach scale” plans consider a stretch of river or waterway as a whole  
12 and identify actions that support the whole reach rather than imposing parcel-by-parcel  
13 requirements. Thus incentive programs need to be coordinated on a “reach scale” so that  
14 farmers can effectively operate in a way that preserves existing river or waterway functions.  
15

16 “Coordinate” means “to bring into a common action, movement, or condition:  
17 harmonize ... to act or work together well.”<sup>64</sup> New Policy LU 7.B.7 thus directs the County to  
18 promote incentives that will enable the operation of agricultural resource lands to “work  
19 together well” with preservation of existing ecological functions along whole stretches of  
20 waterway. The Board finds nothing in this amendment suggests creation of new salmon  
21 habitat through inundation of farmland. Rather, the policy addresses preservation of existing  
22 environmental functions. The amendment is not inconsistent with the LU 7 goal of  
23 conserving agricultural land.  
24

25 Revised Natural Environment Policy NE 1.A.7:

26 The county shall establish criteria for prioritizing natural resource industry  
27 uses and natural environment protection enhancement and/or restoration  
28 based on the land’s potential for resource productivity, ecological function  
29 and investment-to-return ratio.  
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<sup>62</sup> Petitioner’s Opening Brief at 17.

<sup>63</sup> County Prehearing Brief at 28.

<sup>64</sup> Merriam-Webster’s Dictionary (11<sup>th</sup> Edition, 2008).

1 The Farm Bureau protests that adding “enhancement and/or restoration” to this  
2 Natural Environment policy allows the County to go beyond preservation of existing  
3 ecological functions when it establishes its criteria for prioritizing agricultural versus habitat  
4 uses.<sup>65</sup> The County states this policy does not pit agricultural interests against restoration  
5 but calls for the development of criteria for making choices, based on the characteristics of  
6 the land at issue.<sup>66</sup>

7  
8 The Board finds the addition of “enhancement and/or restoration” to Natural  
9 Environment Policy NE 1.A.7 does not thwart the LU 7 goal of conserving farm lands.  
10 Rather, the policy requires the County to develop prioritization criteria that weigh both  
11 agricultural productivity and ecological functions. The Bureau’s fear of “unbridled discretion”  
12 is groundless.

13 Revised Natural Environment Policy NE 1.C.2 providing strategies to enhance fish  
14 habitat:

15  
16 (c) coordinating the use of agricultural resource lands with the protection,  
17 restoration and/or enhancement of ecological functions and values;

18 (d) developing incentive-based, voluntary restoration and enhancement  
19 programs to offset impacts to overall functions and values resulting from  
20 development projects or the use of agricultural resource lands and  
21 encouraging creative on-site, off-site, or joint and reach scale  
22 restoration/enhancement proposals that optimize natural and/or agricultural  
23 resource values and ecological function.

24 The Farm Bureau argues: “[U]nder cover of its ‘coordination’ authority the County  
25 arrogates to itself the decision, without docketing, public hearing, or re-designation, what  
26 farmland stays in farming and what farmland is to be destroyed by inundation.”<sup>67</sup> The  
27 County explains the policy directs it “to include the coordination of resource land use with  
28 environmental protection strategies so that the County will not make decisions on ecological  
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<sup>65</sup> Petitioner’s Opening Brief at 18.

<sup>66</sup> County Prehearing Brief at 30.

<sup>67</sup> Petitioner’s Opening Brief at 18.

1 protection or enhancement in isolation from, or without consideration of, the impact on  
2 agricultural resource land use.”<sup>68</sup>

3 Natural Environment Policy 1.C.2 provides policies governing the County’s strategies  
4 to enhance fish habitat. The Board reads NE 1.C.2 (c) as requiring the County to consider  
5 farm land uses when undertaking fish habitat activities and seek to make these uses “work  
6 together well.” NE 1.C.2 (d) promotes reach-scale restoration/enhancement proposals that  
7 optimize agricultural resource values. These two amendments require the County’s fish-  
8 habitat actions to be undertaken with consideration and respect for agricultural lands. The  
9 Board finds these amendments do not thwart the LU 7 goal of conserving agricultural lands.  
10

11 *New Natural Environment Policy NE 4.A.6:*

12 The county shall develop and implement actions to conserve agricultural  
13 resource lands and restore ecological function and values, seeking to  
14 increase both ecological and agricultural resource viability and productivity.

15 The County characterizes this policy as “represent[ing] the County’s best efforts after  
16 years of process, to reconcile competing legal and policy directives and clearly direct that  
17 the County cannot ignore agriculture to the benefit of habitat or vice-versa.”<sup>69</sup> The Farm  
18 Bureau objects that this amendment makes “no mention whatever of re-designation before  
19 inundation.”<sup>70</sup>  
20

21 The Board notes the new Natural Environment policy requires the County “to  
22 conserve agricultural lands” as well as implementing restoration. Net gains in both  
23 ecological and agricultural resource viability and productivity are sought. The Board finds  
24 Policy NE 4.A.6 does not thwart the LU 7 goal of conserving agricultural lands.  
25

26 **Conclusion**

27 There is nothing in Issue 1 as presented by the Farm Bureau which allows the Board  
28 to address the Farm Bureau’s underlying concern that farm land will be lost to restoration  
29 without a de-designation analysis. The Board finds and concludes the Farm Bureau has  
30 failed to carry its burden of demonstrating that the amendments adopted in Ordinance 12-  
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<sup>68</sup> County Prehearing Brief at 31.

<sup>69</sup> County Prehearing Brief at 33.

<sup>70</sup> Petitioner’s Opening Brief at 19.

1 047 create an internal inconsistency in the County's Comprehensive Plan or violate any of  
2 the cited provisions of the GMA.

3  
4 **VI. ORDER**

5 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
6 parties, the GMA, prior Board orders and case law, having considered the arguments of the  
7 parties and having deliberated on the matter, the Board finds:

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- Petitioner Snohomish County Farm Bureau has failed to carry its burden in demonstrating Snohomish County's adoption of Amended Ordinance 12-047 does not comply with RCW 36.70A.060(1)(a), RCW 36.70A.020(8), RCW 36.70A.070(1) & (5)(c)(v), RCW 36.70A.177(1), consistency provisions of RCW 36.70A.070 and RCW 36.70A.040, and Snohomish County Comprehensive Plan General Policy Plan Goal LU 7.

The Boards ORDERS:

- Legal Issue 1 is **dismissed**.
- The matter of *Snohomish County Farm Bureau v Snohomish County (SCFB II)*, Case No. 12-3-0010, is **dismissed** and the case is **closed**.

Dated this 2nd day of May, 2013.

\_\_\_\_\_  
Margaret A. Pageler, Board Member

\_\_\_\_\_  
Cheryl Pflug, Board Member

\_\_\_\_\_  
William Roehl, Board Member

1 Note: This is a final decision and order of the Growth Management Hearings Board issued  
2 pursuant to RCW 36.70A.300.<sup>71</sup>  
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31 <sup>71</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final  
decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW  
34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.

It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth  
Management Hearings Board is not authorized to provide legal advice.